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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa	Art Unit: 2614
Serial No.: 09/802,635	Examiner: Manning
Filed: March 9, 2001	**50P4371**
For: **SYSTEM AND METHOD FOR BILLING FOR INTERACTIVE TELEVISION**	April 10, 2007 750 B STREET, Suite 3120 San Diego, CA 92101

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This responds to the Examiner's Answer dated April 5, 2007, repeating essentially verbatim the previous Answer filed before a Notice of Non-Compliant Brief and corrected Appeal Brief in response evidently triggered a refiling of the Answer. Interestingly, two of the three conferees who signed out the most recent Answer are new to the case - yet have adopted verbatim the Answer prepared by the former conferees. Accordingly, since Appellant's prior Reply Brief raised the issues below and thus since the issues below could have been considered and addressed by the new conferees, a Supplemental Examiner's Answer at this point would be unseasonable.

In response to Appellant's trenchant observation that, since Urakoshi nowhere mentions virtual channels and Connelly nowhere mentions the access restriction table then there is no prior art suggestion to combine, the conferees take a mighty swing and whiff. They completely miss the point by retorting that "the rejection does not rely upon Urakoshi to teach virtual channels." Appellant never said otherwise; Appellant's

point isn't that an apple was being used as a teaching of an orange, it is that apples and oranges are getting mixed together without any prior art reason to do so. Having missed the point, the conferees fail to rebut it, once again resorting to an unsupported ultimate legal conclusion without any evidence of record to support the suggestion to combine.

The Answer continues its display of cognitive dissonance by citing a 1971 case from a now-defunct court to the effect that hindsight reasoning is acceptable ***so long as it takes into account only knowledge*** in the art - and then failing to conform to this 35 year old case law (of dubious vitality given the more recent jurisprudence of the Court of Appeals for the Federal Circuit) by never pointing to any evidence of the skill in the art or even identifying the level of skill being relied on.

The Answer next contends that the motivation to combine the proferred apple of Urakoshi with the proferred orange of Connelly "is to allow parents to control the content that their child accesses" without seeming to recognize that Urakoshi's purpose is in a context different from that of Connelly. Teachings that are specific to a particular field, unless they more broadly suggest other fields, cannot be applied willy-nilly to contexts not envisioned by the relied-upon reference without some evidence from the prior art to do so. Otherwise, the requirement for a prior art suggestion to combine would be eviscerated, since almost every patent extols the virtues of its invention in a vacuum.

The Answer next contends that col. 8, lines 15-41 of Urakoshi teach flags in the relied-upon purchase menu 50 to rebut Appellant's position to the contrary. Problem is, the discussion in col. 8 has nothing to do with the relied-upon menu 50, which is disclosed in an earlier embodiment of Urakoshi, once again kindly if unwittingly making Appellant's point.

The last defect the substance of which has not already been addressed is the contention in the Answer that Claim 4 is not further patentable because, although the relied-upon paragraph 33 of Linehan simply states that TV originators "may hope" in some unconsummated way to receive a percentage of sales from merchants, paragraphs 38, 39, and 63 can now be trotted out to remedy the shortfall of the lack of a specific suggestion to arrive at Claim 4. Unfortunately for the conferees' case, paragraph 38 says nothings at all about billing of any sort. Paragraph 39 simply states that consumer can be directed to a Web site by means of a set-top box to buy things, and the only thing it says about billing is the obvious - that a "payment protocol" (presumably, between the buyer and the Web site) can be initiated. Paragraph 63 teaches in relevant part that the bank may allocate revenue to TV originators, but this is of little help to the rejection of Claim 4 since it requires that the entity which is ***billed*** is an owner or publisher of accessed content.

Respectfully submitted,

John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

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